

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

KELLEY FOODS OF ALABAMA, INC.)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	
v.)	1:04-cv-01246-MHT-DRB
)	
MYERS NISSI & COMPANY, INC.; a)	
corporation d/b/a VERTICALSOFT,)	
)	
Defendant.)	

ORDER

Upon the District Judge's referral of this case to the undersigned Magistrate Judge for mediation pursuant to Local Rule 16.2, and pursuant to a pre-mediation telephone conference with counsel, it is

ORDERED that this matter is hereby set for a **mediation** conference at **1:00 p.m. on September 7, 2006**, in Courtroom 4A, Frank M. Johnson, Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama before the undersigned Magistrate Judge. It is further ORDERED as follows:

1. **REQUIRED ATTENDANCE.** The *attorneys* who will try the case shall appear at the Mediation Conference with the *parties* and a **representative having full authority to negotiate and to settle the case on any terms.**

2. **PRIOR SETTLEMENT CONFERENCES.** Mediation conferences are often unproductive unless the parties have already exchanged demands and offers in a serious effort to settle the case on their own. If counsel have not held a good-faith, face-to-face settlement conference, as required in the Court's scheduling order, counsel shall confer with each other *before the date of the mediation conference* and make a good-faith effort to settle this case.

Additionally, prior to the mediation conference, counsel shall confer and attempt to agree upon the form and contents of mutual releases for execution if this case is settled.

3. **CONFIDENTIAL MEDIATION STATEMENT.** On or before **September 5, 2006**, each party shall deliver *directly to the undersigned Judge* a *confidential mediation statement* which is intended solely for the Court's use in preparing for the mediation conference. If it is necessary for a party's timely filing, the statement may be transmitted by facsimile directly to the Judge's Chambers at (334) 954-3741. This confidential mediation statement should ***not be filed with, or transmitted via facsimile to, the Clerk*** of the Court **nor** served upon the other parties. All matters communicated to the undersigned Judge in confidence will be kept confidential and will not be disclosed to any other party or to the trial judge.

The confidential mediation statement shall be limited to ten (10) pages and should include the following:

- a. An estimate of the costs and time to be expended for further discovery, trial preparation, and trial;
- b. A pertinent history of the litigation and past settlement discussions, including the results of the face-to-face settlement conference;
- c. An explanation of the party's claims or defenses and a candid assessment of the strengths and weaknesses of those claims or defenses;
- d. A candid statement of the following:
 - ☐ the party's objectives in this litigation;
 - ☐ the nature of the relationship between the party and counsel;
 - ☐ any sensitive issues or matters;
- e. The relief sought; IF damages are sought, the party should provide the court with the evidence which supports the request.
- f. A full and complete explanation of any subrogation claims and how these

claims impact on the plaintiff's claim for damages;

g. Counsel's candid assessment of any impediments to settlement.

4. Counsel for the parties should confer with their clients *before the date of the mediation* for a *realistic* assessment of the value of this case as it relates to reaching a settlement or continuing litigation to a trial.

Done this 30th day of August, 2006.

/s/ Delores R. Boyd

DELORES R. BOYD
UNITED STATES MAGISTRATE JUDGE